

examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, or to provide guidance on every problem which may arise under the Act, no inference should be drawn from the fact that a subject or illustration is omitted.

(g) It should not be assumed that the lack of discussion of a particular subject in this subpart indicates the adoption of any particular position by the Department of Labor with respect to such matter or to constitute an interpretation, practice, or enforcement policy. If doubt arises or a question exists, inquiries with respect to matters other than safety and health standards should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, or to any regional office of the Wage and Hour Division. Safety and health inquiries should be addressed to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, or to any OSHA regional office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

#### § 4.102 Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 38, 39), which are made expressly applicable for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O'Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act. The Secretary is also authorized to make reasonable limitations and to make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act (except section 10), but only in special circumstances where it is determined that such action is necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purposes of the Act to protect prevailing labor

standards. The authority and enforcement powers of the Secretary under the Act are coextensive with the authority and powers under the Walsh-Healey Act. *Curtiss Wright Corp. v. McLucas* 364 F. Supp. 750, 769 (D NJ 1973).

#### § 4.103 The Act.

The McNamara-O'Hara Service Contract Act of 1965 (Pub. L. 89-286, 79 Stat. 1034, 41 U.S.C. 351 *et seq.*), hereinafter referred to as the Act, was approved by the President on October 22, 1965 (1 Weekly Compilation of Presidential Documents 428). It establishes standards for minimum compensation and safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the Federal Government and the District of Columbia. It applies to contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after January 20, 1966. It has been amended by Public Law 92-473, 86 Stat. 798; by Public Law 93-57, 87 Stat. 140; and by Public Law 94-489, 90 Stat. 2358.

#### § 4.104 What the Act provides, generally.

The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees. Under its provisions, every contract subject to the Act (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of \$2,500 must contain stipulations as set forth in § 4.6 of this part requiring: (a) That specified minimum monetary wages and fringe benefits determined by the Secretary of Labor (based on wage rates and fringe benefits prevailing in the locality or, in specified circumstances, the wage rates and fringe benefits contained in a collective bargaining agreement applicable to employees who performed on a predecessor contract) be paid to service employees employed by the contractor or any subcontractor in performing the services contracted for; (b) that working conditions of such employees which are under the control of the contractor or subcontractor meet